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| <b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b><br>as Express Mail No. EV544475777US  |  | Docket Number (Optional)<br>P5088 |
| I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]<br>on <u>August 4, 2005</u><br>Signature |  | Application Number<br>09/846,254  |
|  |  | Filed<br>May 2, 2001              |
|  |  | First Named Inventor<br>Kampe     |
|  |  | Art Unit<br>2194                  |
|  |  | Examiner<br>Andy HO               |

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.  
 assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

attorney or agent of record.  
Registration number 44,866

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Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Signature

Kent A. Lembke

Typed or printed name

720-406-5378

Telephone number

August 4, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

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| <input type="checkbox"/> | *Total of _____ forms are submitted. |
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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Client Matter No. 80168.0102.001  
Express Mail No. EV544475777US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

|   |                        |
|---|------------------------|
| Serial No. 09/846,254                           | Confirmation No.: 5905 |
| Application of: Mark A. Kampe et al.            | Customer No.: 32658    |
| Filed: May 2, 2001                              |                        |
| Art Unit: 2194                                  |                        |
| Examiner: Ho, Andy                              |                        |
| Attorney Docket No. P5088                       |                        |
| For: CLUSTER EVENT SERVICE METHOD AND<br>SYSTEM |                        |

ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the final Office Action mailed May 4, 2005 and the Advisory Action mailed July 12, 2005, Applicants request that the claim rejections be reviewed prior to the filing of an Appeal Brief for the reasons provided in the following paragraphs.

Issues for Review

Applicants believe there are clear errors in the Examiner's rejections that should be reviewed and that such a review will show that the cited references do not support a *prima facie* obviousness rejection. The issues for review do not involve determining what a reference teaches but instead involves determining whether what is taught by the reference as construed by the Examiner supports a *prima facie* rejection of claims based on obviousness.

In the Office Action dated May 4, 2005, claims 1-4, 6-12, 14-22, 33-40, 43, 62-69, 74-75, 78-80, 85-86, and 94 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,477,585 ("Cohen"). This rejection was retained in the July 12, 2005 Advisory Action, and a reviewable issue is whether Cohen fails

to show a subscriber or application node that performs filtering of events published on an event channel.

As stated in Applicants' June 15, 2005 Amendment: "Claim 1 calls for a filter to be provided 'on said subscriber node', and this filter acts to 'process a plurality of events published on said event channel to identify said event as a matching event.' With this configuration, the subscriber node does the filtering of events published or made available on a linked event channel, i.e., the network uses subscriber-side filtering. In contrast, Cohen teaches supplier or publisher-side filtering. Hence, the network of claim 1 is not shown or suggested by Cohen.

As discussed in the prior response, with regard to claim 1, the Office Action cites Cohen at col. 5, lines 48-49 for teaching the event channel of claim 1 and at col. 6, line 7 (consumer-side EMS filter) and col. 6, lines 19-22 for showing a filter to identify an event on the subscriber node. Applicants disagree with this construction of Cohen. At col. 5, lines 55-61 with reference to Figures 2 and 3, Cohen makes it clear that its event distribution method involves providing a single host computer running an event management system (EMS 22), i.e., the supplier or publisher that performs the filtering. According to Cohen, clients must subscribe to the EMS 22 and also define filters that are stored in a filter database 46 at the device hosting the EMS 22 (i.e., not on the event consumers 26a-26n). Also, with reference to Figure 3, the event channel is shown to be part of the EMS 22. Based on these arguments, Applicants concluded in their last response that Cohen fails to show 'a filter on said subscriber node' because as can be seen in Figure 3 the event consumers 26 are remote to the EMS 22 which stores the filters in database 46."

In the Response to Arguments of the Final Office Action, the Examiner states that Cohen "does not explicitly teach the filter is on the subscriber node" but then, argues that because the consumer uses a consumer API to define filters and add it to an event filter group that one skilled in the art would "conclude the filter is in fact from the subscriber node wherein this filter being created and forward to the filter group as disclosed by Cohen." Therefore, the Examiner asserted that the language of claim 1 is met by the Cohen teaching. In the

Advisory Action, the Examiner repeated similar logic in stating that "an event consumer uses the Consumer API to define a new event filter and add it to an event filter group" and because a consumer can control such filters that are stored in the filter database 46 the Examiner argues that the "consumer has total control over the event filter", which leads the Examiner to state "one of ordinary skill in the art would conclude the filter is in fact from the consumer node" (emphasis added) and the "reference meets the limitation as claimed."

Applicants believe this is a clear error (i.e., reading a limitation out of a claim or failing to produce a reference that shows or suggests each claim limitation) that should be reviewed. Claim 1 requires that the filter not only be on the subscriber node temporarily during its creation before it is transferred to a publisher node for storage in a filter database but that the filter also be on the subscriber node to "process a plurality of events published on said event channel" by matching the event with "at least one pattern field...within said filter." The Examiner argues that although Cohen teaches the filters are "from" a client API and teaches keeping filters on a centralized database rather than on a user node the Cohen reference still teaches the limitations of claim 1. This is a clear error that reads limitations out of a claim or that rejects claim 1 based on a reference that does not show or suggest each claim limitation.

As stated in the June 15, 2004 Amendment: "Claim 1 is written to require that the subscriber node perform the filtering of events. In direct contrast, as noted by the Examiner, Cohen teaches in Figure 3 and related text that the filters created by the consumer via operation of event consumers 26a-26n and consumer API are stored in the consumer database 40 for use in filtering by the event management system 22, i.e., the events are filtered prior to being sent to the consumers, which simply receive all events transmitted to them. As a result, Cohen does not support a rejection of claim 1, and Applicants request that this rejection be withdrawn."

Regarding independent claim 12, the Office Action relies on Cohen to reject the claim in a manner similar to that of claim 1. Therefore, the reasons for allowing claim 1 over Cohen are applicable to claim 12. Additionally, Cohen fails to teach a

queue on the same node that assigns the filter and receives and uses matching events. In contrast, the queue 47 is shown to be part of the EMS 22 and is placed on single host within a network as shown in Figures 2 and 3 (e.g., not on the consumer nodes 26). This additional reason for allowing claim 12 was provided in the last response, but the Examiner did not address the argument in the Response to Arguments in the Final Office Action. For this additional reason, the rejection of claim 12 based on Cohen is not proper and should be withdrawn.

The Advisory Action states in the fourth paragraph of page 2 that regarding claim 12 Applicants are arguing “a limitation that is not claimed.” This is a clear error because claim 12 in the last 2 lines states “said event is placed in a queue on said node by said event server prior to the use by said application.” Hence, the Examiner has failed to show how Cohen supports a *prima facie* case of obviousness for claim 12 by indicating that this limitation is not in the claim and not providing a reference that shows the limitation.

Independent claims 33, 62, 74, and 80 were rejected in the Office Action mainly for the same reasons as provided for rejecting claim 1, and the reasons provided for allowing claim 1 over Cohen are applicable to these claims.

Further, in the Final Office Action, claims 70-73, 76-77, and 91 were rejected under 35 U.S.C. §103(a) as being unpatentable over Cohen in view of U.S. Pat. No. 6,314,533 (“Novik”).

Referring to independent claim 70, the Final Office Action states that Cohen fails to teach building its filters from a “binary tree” but cites Novik at col. 2, lines 56-59 for providing teaching building filters from “search trees” (as called for in claim 70). However, at this citation, Novik states “Preferably, the filtering of events would be performed at the event provider itself, such that any events that are not requested by a subscriber would be discarded at the event provider.” There is no teaching at this citation of building a filter from a plurality of search trees, of selecting a search tree from said filter, and comparing said event with said search tree as called for in claim 1. The Advisory Action further cites Novik at Fig. 6 and

col. 14, lines 40-53 for overcoming the deficiencies of Cohen, but Applicants could not find teachings that support a *prima facie* rejection of claim 70.

As discussed in Applicants' June 15, 2005 Amendment, Novik teaches, similarly to Cohen, that filtering is performed at the event supplier or publisher. In contrast, claim 70 calls for the building, selecting, and use of the filter to be performed at the node that is also used for "receiving an event at said node." Hence, the filtering (and its construction) is performed at the event consumer or subscriber in the method of claim 70 rather than at the event supplier or provider node as taught by both Cohen and Novik. Since these two references fail to teach or suggest each and every limitation of claim 70 and actually teach away from its limitations, claim 70 is not made obvious by the combined teachings of these two references, and Applicants believe this is a clear error that should be reviewed.

Independent claim 91 is directed to a computer program product with limitations similar to that of claim 70. The reasons provided above for allowing claim 70 over Cohen and Novik are believed applicable to claim 91.

### Conclusions

In view of all of the above, Applicants respectfully request that a review panel review the Examiner's rejections and produce a finding that there are no actual issues remaining for appeal and that the application is allowed.

A check is provided for the fee associated with a filing of a Notice of Appeal. Additionally, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

Respectfully submitted,



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